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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,946	03/11/2004	David B. Wiley	632898-042-C1	4846

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EXAMINER	
GEMBEH, SHIRLEY V	
ART UNIT	PAPER NUMBER
1614	
MAIL DATE	DELIVERY MODE
05/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/797,946	WILEY ET AL.	
	Examiner	Art Unit	
	SHIRLEY V. GEMBEH	1614	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *04 April 2008*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-25*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Ardin Marschel/
Supervisory Patent Examiner, Art Unit 1614

Continuation of 11. does NOT place the application in condition for allowance because: Claims 1, 3, 5-6, 9, 11-12 and 14 remain rejected under 35 U.S.C. 102(b) as being anticipated by Nissen et al. US 6,031,000.
Applicant argues that the claims recite treating a subject having a dificency in Ca/Mg serum levels.

That these limitations are not disclosed and are not inherent.
In response, the argument is found not persuasive. The claims recite treating calcium and or magnesium deficiency in a human or subject.. HIV infection and or AIDS are known in the art to have hypocalcaemia since 1999. No specificificity is taught by instant claim 1 as to what is inclussive or not in the treatment of patients with calcium/magnesium deficiency. To support Examiners ground as requested by Applicant "Reliance on inherency requires a showing , Examiner did show in the last office action of record that HIV patients suffer from low calcium, whether it is caused by medication would not matter treating is still been given. See again the Kuen reference of record. As to taking blood samples , this is normal medical procedure and is also taught in the attached document as evident by Kuen et al.

Careful consideration has been given and the rejection is maintained.

Claims 1, 5-6 and 9 remain rejected under 35 U.S.C. 102(b) as being anticipated by Vukovich et al. American Soc. Nutr. Sci. is withdrawn.

Claims 1, 5-6, 7-9, 12 remain rejected under 35 U.S.C. 102(b) as being anticipated by WO 94/17678. is withdrawn.

Claims 1-25 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Nissen et al. US 6,031,000 taken with Vukovich et al. American Soc. Nutr. Sci. and WO 94/17678 in view of www.naturalconnections.com (1998) as in the office action of record dated 4/19/06.
Applicant argues that the scope and the content of the prior art, differences between prior art and level of the ordinary skill in the art should be considered when making a 103 rejection.
That the office action failed to provide articulate reason supporting evidence for the cited references.
This is found not persuasive, As stated the combine references would have motivated one of ordinary skill in the art to make the claimed invention at the time it was made.
1. As already discussed in the Nissen et al refererence above, the claims are directed to treating Ca/Mg deficiency in a subject human or animal.
2. Administering the compound.
3. elevating the serum levels.
Once the compound is given it goes into the blood system which is already taught in the art as evident by Kuen et al. Nothing unobvious is seen to combine the cited art to treat calcium/magnesuim deficiency in a human with bone loss disease or a fat free -mass in resistance training. The composition has been given for those treatment in the prior art. As stated in the office action dated 1/19/07 calcium have been used to treat disease with calcium and/or magnesium condition because both elements share left/right-sided cell receptors and are essential to human health. Calcium (Ca) and magnesium (Mg) have become the "Gold Standard" when discussing supplements, mineral ratios, paired cell receptors, or many nutrition-related health issues in general.
Applicant's arguments have been fully considered but they are not persuasive.

Lastly Applicant is relying on unexpected result to overcome the rejection, hoewever, the specificationhas no such result for consideration, the examples exemplifies bioavailabiliy and no treatment is taught per say, merely stating high biavailability does not indicate treatment. Based on that reasoning the rejection is maintained until the showing of the unexpected result in the said treatment.
See reasons above and the rejection is maintained as in the last office action of record A condition associated with calcium and magnesium.

Double patenting rejection will be held in abeyance as requested by Applicant.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
SVG
5/2/08